



# MINUTES

## DECEMBER 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Waylon Brown, Vice Chair  
Senator Mark Costello  
Senator Robert Hogg  
Senator Pam Jochum  
Senator Zach Whiting

Representative Megan Jones, Chair  
Representative Steven Holt  
Representative Joe Mitchell  
Representative Amy Nielsen  
Representative Rick L. Olson

EX OFFICIO, NONVOTING MEMBER: Sam Langholz, Administrative Rules Coordinator, Office of the Governor

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Administrative Code Editor, 515.281.6048, and Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

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### BULLETINS NEEDED FOR THIS MEETING: 11/6/19, 11/20/19, 12/4/19

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#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:02 a.m. on Tuesday, December 10, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the November 12, 2019, meeting were approved. The next meeting was scheduled for Friday, January 10, 2019, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. Mr. Jack Ewing, Administrative Code Editor, provided a summary of the preliminary 2019 rules analysis report. Mr. Ewing also summarized technical statutory changes pertaining to rule making that could be included in a bill to be sponsored by the committee. He also described legislative procedures applicable to such a bill. Committee members asked him to prepare a draft for review at the next meeting. The meeting was adjourned at 1:55 p.m.

#### Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report. Committee members asked where the \$40 amount of the charge for the cost of fingerprint checks performed by the Department of Human Services in ARC 4740C came from. Ms. Mechler stated the figure came from the department.

#### HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Theresa Armstrong, Jana Rhoads

ARC 4738C (NOIA), Statewide Monthly Standard Deduction for Personal Care Services at a Residential Care Facility, Proposed Amendment to Rule 75.1(35)“g”(2)  
No discussion on ARC 4738C.

Rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (NOIA), Amended Notice of Intended Action (ANOIA), Notice of Termination (NOT), Adopted and Filed Emergency (AFE), Filed Emergency After Notice (FEAN), and Adopted and Filed (AF).

ARC 4739C (NOIA), Case Management Services, Proposed Amendments to Rules 78.27(6)“a,” 78.37(17)“a,” 78.43(1)“a,” 83.22(2)“a,” and Chapter 90

Committee members asked if the rulemaking resulted from legislation dating from 2012-2013. Ms. Freudenberg explained that legislation had established the Balancing Incentive Program, and the rulemaking is updating the rules for the program. Committee members asked what is being updated by the rulemaking, and she explained that the rulemaking clarifies services available under case management and fee-for-service and makes other clarifying changes. She also noted that the department had received public comments on the rulemaking and would make revisions upon adoption. No action taken on ARC 4739C.

ARC 4740C (NOIA), Nursing Facilities—Calculation of Depreciation, Leasing Arrangements, Iowa Medicaid Enterprise, Proposed Amendments to Rules 81.6, 81.10, and 81.13

Ms. Merea Bentrrott spoke on behalf of the Iowa Health Care Association (IHCA). She explained that the rulemaking includes a change in interpretation by the department that if implemented would immediately impact the way lease payments and agreements of nursing facilities occur during a change of ownership in regard to cost reporting. She stated that the change in interpretation would require providers with certain leaseholder agreements to renegotiate existing leases and review and amend their financing structures as well as requiring new documentation that some providers do not have access to. She stated IHCA has a number of questions about the rulemaking and is awaiting answers from the department. She stated the department has been helpful in clarifying some matters in the meantime.

Committee members asked if the rulemaking would reset the depreciation value of a facility for a new owner and what is being changed by the rulemaking. Mr. Jeff Steggerda, a consultant speaking on behalf of IHCA, explained that his group had prepared a cost report for about 150 facilities in Iowa. He explained that the rulemaking clarifies how a provider will continue to report depreciation from a prior owner, and he is seeking clarification on how the rulemaking will be implemented and how providers will submit the required information.

No action taken on ARC 4740C.

ARC 4750C (AF), Public Assistance Program Evaluation, Amendments to Chapter 13

No discussion on ARC 4750C.

ARC 4751C (AF), Medical Assistance—Forms, Amendments to Rules 79.3(2)“d,” 79.8(1)“c,” 80.2(2)“b,” and 81.6(16)“g”(9)

Committee members asked if updating forms in rules outside of the rulemaking process is a matter that might be appropriate to include in the proposed legislation Mr. Ewing discussed earlier in the meeting, and Mr. Ewing was uncertain that he would be able to make determinations as to the substance of an update to a form in order to implement such a legislative amendment. He stated that updating forms could be entirely excluded from the rulemaking process, but there could be substantive policymaking impacts from such updates if that were allowed. Other committee members stated that an update of a form can be substantive and suggested that the matter would not be appropriate for the legislation.

No action taken on ARC 4751C.

ARC 4752C (AF), Child Care Centers—Preinspection Visits, Regulatory Fees, Amendments to Rules 109.2 and 109.3

No discussion on ARC 4752C.

ARC 4753C (AF), Child Abuse Mandatory Reporter Training for Child Care Providers, Amendments to Rules 109.7, 110.9, 110.10(1), and 120.10

No discussion on ARC 4753C.

ARC 4762C (NOIA), Disability Services Management—Children’s Behavioral Health Services, Proposed Amendments to Chapter 25

Committee members asked why mental health and disability services regions are verifying income instead of the department, which has experience in such matters. Ms. Armstrong explained that the rulemaking pertains to services provided by the regions, which already verify income for adults. The rulemaking only adds children as eligible for the services provided by regions. She stated that the department does verify income for services it provides.

Committee members asked how the income threshold is affected if a person has insurance through their employer. Ms. Armstrong explained that regions must pay for services that are not funded from any other source, and there is a statutory requirement for cost sharing if a person's income is 150 to 500 percent of the federal poverty level.

Committee members inquired how regions will pay for the projected cost increases for the services provided to children when no additional state funding was provided. Ms. Armstrong explained that regions fund the services through county property taxes and that regions are required to fund services for persons with incomes up to 500 percent of the federal poverty level as well as children with serious emotional disturbances. Members asked how counties that are already imposing the maximum allowable amount of property taxes would fund such services. She explained that the underlying legislation did not change the status quo in regard to the maximum allowable amounts for property taxes, and counties will have to consider this issue when determining what services to cover and how to pay for those services. Members asked if this could lead to services that are not required being discontinued. She explained that would not be true across the state, as some regions have fund balances they can spend down, and regions can also establish waiting lists in addition to discontinuing services that are not required. Members asked how many counties currently impose the maximum allowable amount of property tax, and she stated there are five in 2019, and that she would follow up with more information.

Committee members asked if regions pool funding, and Ms. Armstrong responded that most do. Members asked how that would affect counties that are imposing the maximum allowable amount of property tax, and she explained that regions have governance structures that would deal with such situations. Members asked if regional boards could force counties to raise their property taxes, and Ms. Armstrong said that is the tool available to such boards to resolve funding issues.  
No action taken on ARC 4762C.

ARC 4763C (NOIA), Medical Assistance — Drug Policies, Prior Authorization for Medication-Assisted Treatment, Prescription Refills, Proposed Amendments to Chapters 78 and 79

Committee members asked if the rulemaking would permit a patient with multiple refills of a prescription remaining to change to automatic refills without visiting a doctor, and Ms. Freudenberg explained that the rulemaking addresses only refills made without a person's consent. She verified that such consent is necessary for refills.

Mr. Casey Ficek spoke on behalf of the Iowa Pharmacy Association. He explained that the limits on dispensing fees for maintenance drugs in the rulemaking could disincentivize practices that lead to long-term savings such as synchronization of medicine pickups. He stated this could be an exception to the limit that would not decrease projected savings by the department. He expressed hope that the department would be open to compromise on this rulemaking.

No action taken on ARC 4763C.

ARC 4764C (NOIA), Elimination of Application Fee for Child Support Recovery Services, Proposed Amendments to Rules 95.2(4) and 95.18(3)

No discussion on ARC 4764C.

ARC 4779C (AF), Healthy and Well Kids in Iowa (hawk-i) Program, Amendments to Chapter 86

No discussion on ARC 4779C.

ARC 4792C (AF), Brain Injury Waiver, Amendments to Rules 77.39, 77.52(3), 78.56(2), 83.81, and 83.82

Committee members asked how this rulemaking would affect patients. Ms. Freudenberg explained that it will take longer to identify the services a patient needs, with an additional meeting being necessary, but the services will be improved because they are tailored to the patient. Members asked if providers are aware of the rulemaking, and she stated that they are.

No action taken on ARC 4792C.

ARC 4793C (AF), Juvenile Detention and Shelter Care Homes, Child Foster Care Facilities, Residential Facilities for Children—Licensing and Regulation, Amendments to Chapters 105, 112, and 114-116

Committee members asked if affected agencies are experiencing 25 percent turnover as stated in the fiscal analysis of the rulemaking, and if so, the reasons for such high turnover. Ms. Freudenberg stated that figure is accurate and due to high turnover with workers moving from one facility to another. Ms. Rhoads explained that the positions sometimes do not require a degree and serve as starter positions. She stated that low unemployment is a factor as well, and workers being more mobile as they become more skilled is expected. She stated that the implementation of Families First in 2020 will hopefully stabilize the workforce when contracts are revised. She cited shelter care and group homes as examples, though it would depend on various factors. She cited night aides as workers who are less skilled. Members asked if the department has an assessment of what the wages of these workers are. She explained that the department does not have a comprehensive assessment of wages but relies on facilities to self-report, and information on this issue has been gathered for procurement purposes to determine what the department will offer in its contracting.

No action taken on ARC 4793C.

## **AUDITOR OF STATE**

Representing the agency: John McCormally

ARC 4787C (NOIA), Periodic Examination Fee Schedule, Proposed Amendment to Rule 21.2

Committee members asked if smaller cities would be paying more of the fee increases, and Mr. McCormally explained that fee increases would affect smaller cities more when the relatively higher number of such municipalities in Iowa is considered, but larger cities would see greater fee increases individually.

Committee members asked if there is a prefiled bill that would raise the statutory cap on these fees. Mr. McCormally stated there is, but the bill and the rulemaking are not intertwined and the rulemaking is not contingent on the bill advancing. He noted that the rulemaking would lead to an increase in revenue from about \$377,000 to \$395,000.

Committee members asked why this rulemaking was being pursued. Mr. McCormally explained that in 2021, 100 cities would be newly subject to periodic auditing, which the current fee schedule does not account for. He stated both the rulemaking and the prefiled bill would be necessary to make the audits sustainable in the long term. He further explained that the rulemaking is necessary now because the fee schedule has not been updated since the periodic audits began and the average cost of an audit is about \$4,000 whereas the smallest cities are paying \$800 in fees. He stated that the fees, which have always been set by rule, have not increased since the enabling legislation was enacted in 2014, and even with the fee increase, cities would still be getting a bargain for the auditing service, and adding an additional stratum to the fee schedule will allocate the costs more evenly across cities.

Committee members stated that a fee increase of \$100 is significant for some small cities and urged the State Auditor to consider that, and Mr. McCormally agreed, noting that many communities would see fees decrease as well. Members asked how the State Auditor determined the figure of approximately \$20,000 in increased revenue on which the fee increases are based. Mr. McCormally explained that the new fee schedule was designed so that fees would not need to be increased further when the 100 additional cities are subject to periodic auditing, that the fee increase would not increase revenue until the 100 cities are added, and that if the statutory fee cap is not increased, the State Auditor hopes to use the additional \$20,000 in revenue for increased training. Members asked if the rulemaking would be necessary if the prefiled bill were to be enacted. He explained that raising the statutory fee cap does not generate additional revenue in and of itself; it only allows the State Auditor to raise additional revenue through fee increases. He stated that the additional 100 cities would necessitate an increase in the statutory fee cap, which he acknowledged represents a relationship between the rulemaking and the prefiled bill.

Committee members asked whether the State Auditor's Office could generate \$20,000 in savings through internal efficiencies on matters such as mailing and printing instead of pursuing the rulemaking. Mr. McCormally explained that raising \$20,000 in revenue is not the goal of the rulemaking, but rather to make the audits self-sustaining. He stated that the State Auditor would still be losing money on the audits regardless of the additional \$20,000. He explained that the State Auditor

does about 100 periodic audits a year and has spent far more than the current revenue of \$375,000 doing so, which the rulemaking does not solve. He stated that the State Auditor's Office is taking steps to resolve that shortfall, but the rulemaking is not one of them. Members asked why the \$20,000 increase is necessary if the effect on the State Auditor's Office is inconsequential.

Committee members asked what the fee structure is for large cities such as Des Moines. Mr. McCormally explained that cities with over 2,000 population and budgets over \$1,000,000 have the option of selecting the State Auditor's Office or a private CPA firm to carry out an audit, with costs varying from \$10,000 to \$50,000. Such cities using the State Auditor's Office cost much more than the \$4,000 that a periodically audited city does. He explained that such cities must be audited every year, while periodically audited cities, which must be audited every eight years, only became subject to such auditing in 2014, when the General Assembly determined that more oversight of such cities was necessary.

Committee members asked if the rulemaking was intended to correct the gap between the fee charged for periodic audits and the cost of conducting such audits, and Mr. McCormally agreed, also adding that evening out the costs across cities was another goal. Members asked if a smaller city can get a private audit. He explained that the State Auditor's Office contracts about half of those audits out to CPA firms, although that is not at the city's discretion. Members asked how much of a shortfall the State Auditor's Office is running on the periodic audits, and he explained that in Fiscal Year 2019, the office took in \$377,000, with the \$2,000 over the fee cap put toward a training program, while the audits cost \$480,000.

Committee members asked why the prefiled bill increases the fee cap from \$375,000 to \$600,000. Mr. McCormally explained that when the 100 cities are newly subject to periodic audits, the majority will be in the highest or second highest fee strata, and \$600,000 is the maximum amount of revenue that could be raised if all of those cities are paying the fees provided in the fee schedule. He noted the State Auditor's goal is to avoid further fee increases in the future. Members asked if the State Auditor is accounting for the possibility of cities unincorporating. He explained that three cities had unincorporated in Iowa after the last census, and he did not anticipate more than five to 10 doing so in the future if historical trends hold.

No action taken on ARC 4787C.

## **INSURANCE DIVISION**

Representing the agency: Tracy Swalwell

ARC 4780C (AF), Agency Procedure and Organization, Amendments to Chapters 1 – 4, 10, 36, 39, 41, 55, 58, and 76

No discussion on ARC 4780C.

ARC 4781C (AF), Surplus Lines, Risk Retention Groups and Purchasing Groups, Amendments to Chapter 21

No discussion on ARC 4781C.

## **UTILITIES DIVISION**

Representing the agency: Bernardo Granwehr

### **ARC 4776C (NOIA), Electric Lines, Proposed Amendment to Chapter 11**

Committee members asked if the rulemaking made any changes to the process of providing notifications regarding the use of eminent domain. Mr. Granwehr reviewed the language of the current rule and the rulemaking relating to notices for eminent domain. Members noted that tenants are only notified if the deed to the property is recorded and asked if a person would get a notice if eminent domain is used on a neighboring property, and he stated he would need to follow up with an answer, although he recalled there is a process that would apply to such a situation. Members expressed hope that as much notice would be given as possible for the use of eminent domain, even for the use on a neighbor's land. He stated that the Iowa Utilities Board always strives to balance the interests of property owners and stakeholders within the power granted to the board by the General Assembly. No action taken on ARC 4776C.

## **ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Jennifer Klein

### **ARC 4737C (NOIA), Targeted Jobs Withholding Tax Credit Program — Rescission of Sunset Date for Entering into a Withholding Agreement, Proposed Amendment to Rule 71.4(2)**

No discussion on ARC 4737C.

### **ARC 4774C (NOIA), Rural Housing Needs Assessment Grant Program, Proposed Adoption of Chapter 220**

No discussion on ARC 4774C.

### **ARC 4775C (NOIA), Rural Innovation Grant Program, Proposed Adoption of Chapter 221**

No discussion on ARC 4775C.

## **IOWA FINANCE AUTHORITY**

Representing the agency: Kristin Hanks-Bents

### **ARC 4794C (AF), Low-Income Housing Tax Credits—Qualified Allocation Plans, Amendments to Rules 12.1 and 12.2**

No discussion on ARC 4794C.

### **ARC 4795C (AF), Home and Community-Based Services Revolving Loan Program, Amendments to Chapter 21**

No discussion on ARC 4795C.

## **EGG COUNCIL, IOWA**

Representing the agency: Maison Bleam

### **ARC 4783C (NOIA), Nomination Petitions; Rule Updates, Proposed Amendments to Chapters 1-5**

Committee members thanked the council for its efforts to promote eggs in Iowa and asked what the egg sale threshold is for membership on the council and if a person selling eggs hatched by chickens living in a back yard would qualify. Mr. Bleam explained that there is a contribution to the council for all egg sales, any contributor can become a member, and the threshold to be a member of the council is 2 cents for every 30 dozen eggs sold.

No action taken on ARC 4783C.

## **STATE PUBLIC DEFENDER**

Representing the agency: Kurt Swaim

ARC 4778C (NOIA), Claims for Indigent Defense and Other Professional Services, Proposed Amendments to Chapters 7, 12, and 13

Committee members stated they had received comments on the rulemaking indicating that the rate cap for investigators could be difficult for attorneys in rural Iowa and acknowledged the need to avoid repeated fee increases over time. Members also stated that the limitation on mileage reimbursement to travel outside of an attorney's county could be hard on rural attorneys who practice outside of a county seat.

Mr. Doug Struyk spoke on behalf of the Iowa State Bar Association (ISBA). He expressed appreciation for the State Public Defender's work on the rulemaking and the General Assembly's recently enacted \$3 increase for indigent defense rates and noted there has been extensive dialogue between ISBA and the State Public Defender regarding the rulemaking. Regarding the rate cap for investigators, he explained that courts already set an amount that can be spent on investigators before an investigator can be retained, so a rate cap already exists. He expressed concern that the rate cap in the rulemaking may be low enough that some defendants may lose access to particular investigators or even access to investigators altogether. He acknowledged that the State Public Defender and the General Assembly have access to a finite amount of funding when setting budgets, but asserted the cap set by a court is sufficient and the \$75 hourly cap in the rulemaking is arbitrary.

Committee members asked for clarification that the requirements in the rulemaking relating to investigator and mileage rates were not derived from recently enacted legislation that established hourly rates for private pay attorneys but did not address investigators and mileage, and Mr. Swaim agreed that those requirements were not derived from the legislation. Members asked Mr. Struyk if he felt those requirements exceeded the terms of the legislation, and he explained that ISBA's relevant committee chair did not find that those requirements exceeded the terms of the legislation.

Mr. Swaim explained that the State Public Defender periodically seeks input from its reviewers on how it can use its limited funding more effectively, and in this case, the State Public Defender found that payment of investigators at a higher rate than attorneys working on class "A" felonies was an anomaly. He further explained that sometimes investigators were being asked to perform tasks such as clerical work that attorneys are not paid for. Regarding the mileage limitation, he acknowledged that driving within a county is done in connection with legal work, but asserted such driving should be considered overhead similar to using a parking garage. He expressed openness to the committee's viewpoint on this issue. He asserted that attorneys would sometimes double charge for a single trip to a courthouse to serve multiple clients, and the rulemaking can reduce the need to audit such charges.

Committee members stated that there appears to be no statutory authority to impose a cap on hourly rates for investigators, but it did not make sense for an attorney working on a class "A" murder case to be compensated at a rate less than an investigator, and the State Public Defender may want to consider seeking legislation concerning collateral services such as investigations. Members acknowledged the concerns raised by the State Public Defender that the mileage limitation is intended to resolve, but stated that mileage is easy to track for purposes of a committee member's travel within their district and asked the State Public Defender to seek a more narrowly tailored solution, particularly given the larger geographical size of some counties in Iowa.

Mr. Swaim thanked Legislative Services Agency staff for their assistance during the rulemaking process.

No action taken on ARC 4778C.

## **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT**

Representing the agency: Blake Derouchey

ARC 4769C (NOIA), Membership of Joint 911 Service Boards, Proposed Amendment to Rule 10.3(1)"a"

No discussion on ARC 4769C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Tony Alden

ARC 4745C (NOIA), Marital and Family Therapists and Mental Health Counselors—Licensure, Proposed Amendments to Chapter 31  
No discussion on ARC 4745C.

ARC 4746C (NOIA), Marital and Family Therapists and Mental Health Counselors—Continuing Education, Mandatory Reporter Training, Proposed Amendments to Rules 32.1-32.3  
No discussion on ARC 4746C.

ARC 4768C (NOIA), Physician Assistants—Electronic Transmission of Prescriptions, Proposed Adoption of Rule 327.6(4)

Committee members asked if the enabling legislation required that penalties collected be placed in the Drug Information Program Fund. Mr. Alden explained that the board consulted its assistant attorney general after Legislative Services Agency personnel asked the same question and that the administrative penalties governed by the rulemaking are placed in the fund, while civil penalties collected by the board are subject to different procedures.

No action taken on ARC 4768C.

ARC 4785C (NOIA), Physical Therapists and Physical Therapist Assistants, Occupational Therapists and Occupational Therapy Assistants — Child Abuse and Dependent Adult Abuse Mandatory Reporter Training, Proposed Amendments to Rules 200.9(4) and 206.10(4)

No discussion on ARC 4785C.

ARC 4786C (NOIA), Hearing Aid Specialists — Child Abuse and Dependent Adult Abuse Mandatory Reporter Training, Proposed Amendments to Rule 121.9(4)

No discussion on ARC 4786C.

## **DENTAL BOARD**

Representing the agency: Steve Garrison

ARC 4741C (NOIA), Dental Assistant Registration Examination—Elimination of Remediation Requirement, Proposed Amendments to Rules 20.2, 20.5(2), 20.11 - 20.17, and 22.5

No discussion on ARC 4741C.

ARC 4748C (AF), Teledentistry, Amendments to Rules 27.12 and 27.13

Ms. Sara Allen spoke on behalf of the American Association of Orthodontists and the Iowa Society of Orthodontists. She expressed appreciation for the board's and constituent groups' work on the rulemaking and noted her clients' goals of ethically advancing the art and science of orthodontics and improving the health of the public by promoting quality orthodontic care in Iowa and across the nation. She expressed concern about the rulemaking in regard to patient safety. She explained that as technology and medicine evolve, patient care is changing. She expressed hope that such concerns could be addressed legislatively and noted that she had forwarded a letter to committee members on the matter. She stated her clients do not want to stand in the way of the good that would be done by the rulemaking but do hope to address their concerns in the future.

Mr. Adam Freed spoke on behalf of the Iowa Dental Association (IDA). He agreed with Ms. Allen's comments and explained that IDA has had productive discussions with the board and recognizes that teledentistry can improve access to care particularly in rural areas, but wants to make sure that access does not come at the cost of quality of care and patient safety. He stated IDA's members are concerned about the lack of specificity in the rulemaking concerning standards of care. He noted the rulemaking states that the standard of care remains the same regardless of whether a patient is seeing a dentist via teledentistry or in person, but stated a later reference to "evidence-based standards" is unclear, and the rulemaking should specify what these standards are. He also asserted that some oral health conditions cannot be addressed via teledentistry, and IDA has concerns regarding how such conditions would be treated via teledentistry. He stated IDA would continue to work with the board and the General Assembly to address its concerns.

Mr. Bruce Thorson, a public member of the board, spoke on behalf of himself, but not the board. He explained the board has studied the practice of teledentistry for almost three years. He stated the board did its due diligence and feels the rulemaking is fair, not overly regulatory, brings safety to Iowans, and increases access to care across the state. He explained that he witnessed the expansion of telemedicine as a hospital administrator and physicians initially had concerns similar to those expressed by the previous speakers that never came to fruition. He provided an example of how teledentistry could benefit the area around Shenandoah and urged support for the rulemaking.

Dr. Bob Russell spoke on behalf of the Department of Public Health. He explained that access to dental care in Iowa is multifaceted with many Iowans being underserved. He asserted that over one-third of adult Iowans lack regular access to dental care and noted a decline in dentists who take Medicaid patients. He explained that this is particularly an issue in rural Iowa and that many emergency rooms see patients with undiagnosed dental disease. He stated the department supports teledentistry. He explained that teledentistry technology is less well established than telemedicine and there is less teledentistry training as well. He asserted that the rulemaking must be given time to work and dentists must be given time to learn about teledentistry and explained that the rulemaking was drafted to be more general rather than specific, so it would not be overly burdensome, which would allow for dentists to be able to use their professional expertise and continue learning about this subject and to keep their patients safe. He expressed optimism that Iowa dentists would make the right decisions as new knowledge becomes available. He stated there would likely be more developments relating to teledentistry as the practice of dentistry changes and urged support for the rulemaking.

No action taken on ARC 4748C.

#### **NURSING BOARD**

Representing the agency: Kathy Weinberg

ARC 4743C (NOIA), Child Abuse and Dependent Adult Abuse Mandatory Reporter Training; Wallet Cards; Internet-Based Test of English as a Foreign Language, Proposed Amendment to Rules 3.1, 3.6(2)“c,” and 3.7

No discussion on ARC 4743C.

ARC 4744C (NOIA), Continuing Education; Child Abuse and Dependent Adult Abuse Mandatory Reporter Training, Proposed Amendments to Rule 5.2

No discussion on ARC 4744C.

#### **PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 4796C (AF), Mandatory Training for Identifying and Reporting Abuse, Amendment to Rule 2.16

No discussion on ARC 4796C.

ARC 4797C (AF), Temporary Designation of Controlled Substances—Synthetic Cannabinoids, Brexanolone, Solriamfetol, Amendments to Rule 10.39

No discussion on ARC 4797C.

ARC 4798C (AF), Telepharmacy Practice, Amendments to Rules 13.4, 13.8, 13.9, 13.11(1), 13.16, 13.17, and 13.21(1)

No discussion on ARC 4798C.

#### **PUBLIC SAFETY DEPARTMENT**

Representing the agency: Chandlor Collins

ARC 4799C (AF), Public Safety Survivor Benefits Fund, Adoption of Chapter 292

No discussion on ARC 4799C.

ARC 4800C (AF), Vehicle Impoundment, Amendments to Chapter 6

Mr. Collins stated that the purpose of the rule was to implement the Iowa Supreme Court's decision in *State v. Ingram* for inventory of closed containers. Committee members inquired whether in the opinion of the department in addition to amending the Iowa Administrative Code, the Iowa Code needs to be amended in light of the Iowa Supreme Court decision in *State v. Ingram*. Mr. Collins responded that the department wants to ensure that the rules that police officers are executing are consistent with *State v. Ingram*.

No action taken on ARC 4800C.

ARC 4801C (AF), Former Peace Officer Replacement Identification Card—Removal of Fee, Amendments of Rule 93.3(9)

No discussion on ARC 4801C.

ARC 4802C (AF), Closed Circuit Surveillance Systems, Amendments to Rules 141.1 and 141.6

No discussion on ARC 4802C.

**TRANSPORTATION DEPARTMENT**

Representing the agency: Sara Seidsma; Angel Robinson

ARC 4736C (NOIA), Special Registration Plates—Blackout Plates, Electronic Submission of Applications, Proposed Amendments to Chapter 401

Committee members and the department engaged in a conversation about license plates due to a constituent concern raised by Mr. Keith Greiner. Ms. Seidsma reported that an amateur radio operator plate cannot be super-imposed on a blackout plate, but a person may obtain a personalized blackout plate with radio call letters. Ms. Seidsma stated that there is currently an administrative rule which prohibits the use of a zero on a personalized plate. Ms. Robinson stated that the use of zero cannot be used to avoid confusion by public safety. Mr. Greiner provided commentary on why he wanted a combined amateur radio and blackout plate. Ms. Robinson indicated that in order to effectuate Mr. Greiner's request, it would require an administrative rule change to use a zero with a slash rather than an O which is the current option; the department is willing to consider a rule change.

No action taken on ARC 4736C.

ARC 4759C (AF), Minors' School Licenses—Driving Distance Between Residence and School, Amendments to Rules 602.2 and 602.26

No discussion on ARC 4759C.

ARC 4760C (AF), OWI and Implied Consent, Amendments to Chapter 620

No discussion on ARC 4760C.

ARC 4770C (NOIA), Towable Recreational Vehicles; Certifications of Trust; Special Farm Truck Weights, Amendments to Chapters 400 and 425

Ms. Jenny Dorman spoke on behalf of the ISBA's Probate and Trust Law section. She indicated that the rulemaking is not consistent with the certification of trust legislation, which the ISBA proposed.

Ms. Dorman indicated that if the trust document requires signatures by all trustees, a transfer of title would also require signatures by all trustees. She stated that the ISBA has emailed the department and will email the committee as well.

No action taken on ARC 4770C.

ARC 4771C (NOIA), Driver Education, Proposed Amendments to Rules 634.1, 634.2, 634.4, 634.6 to 634.8, and 634.11

No discussion on ARC 4771C.

ARC 4803C (AF), Electronic Submission of Proof of Financial Responsibility, Amendments to Rules 524.7 (1)"c," 640.1(3), 640.3, 640.4, 640.5(1), and 640.6

No discussion on ARC 4803C.

## **VETERANS AFFAIRS, IOWA DEPARTMENT OF**

Representing the agency: Steven Lukan

ARC 4761C (AF), Veterans Trust Fund, Rescission of Rule 14.4(12)  
No discussion on ARC 4761C.

ARC 4767C (NOIA), Injured Veterans Grant Program—Eligibility, Proposed Amendment to Rule 11.3  
No discussion on ARC 4767C.

## **ADMINISTRATIVE SERVICES DEPARTMENT**

Representing the agency: Tami Wiencek, Jim Kurtenbach

ARC 4735C (NOIA), Procurements from Targeted Small Businesses, Proposed Amendments to Rules 117.5 (2), 117.15, and 118.5  
No discussion on ARC 4735C.

ARC 4777C (NOIA), Volunteer Leave of Absence for Executive Branch Employees, Proposed Amendments to Rules 63.17 to 63.21

Committee members questioned how it would be verified that the entity volunteered with is a 501(c)(3) organization. Acting Director Jim Kurtenbach stated that the department is finalizing policies to distribute to each department to verify that employees are volunteering with a 501(c)(3) or another governmental entity.

Committee members asked for the impetus for this rulemaking. Mr. Kurtenbach stated that Governor Reynolds on September 24, 2019, rolled out a volunteer paid policy. Mr. Kurtenbach stated that since 1978 in the State of Iowa, every Governor has supported the Commission on Volunteerism. He stated that this rulemaking makes the State an employer of choice and models the State as an employer for private employers. Mr. Kurtenbach commented that studies of this type of policy demonstrate among employees increased morale, decreased turnover, and a more engaged employee base.

Some committee members commented that it is not volunteering if an employee gets paid for the act. Other committee members stated that the policy behind the rulemaking is worthy, especially if it results in a morale boost. Some committee members expressed appreciation for a State setting an example for private corporations.

No action taken on ARC 4777C.

## **PUBLIC HEALTH DEPARTMENT**

Representing the agency: Susan Dixon, Sarah Reisetter

ARC 4773C (NOIA), Lead-Based Paint Activities, Proposed Amendments to Rules 70.2 to 70.6 and 70.10  
No discussion on ARC 4773C.

ARC 4766C (NOIA), Iowa Care for Yourself Program, Proposed Amendments to Chapter 8

Committee members noted that throughout the rulemaking references were changed from “women” to “individual” to reflect the fact that men are able to develop breast cancer, but the rulemaking summary still said “women.” Ms. Dixon stated she would look into that.

No action taken on ARC 4766C.

ARC 4772C (NOIA), Medical Cannabidiol Program, Proposed Amendments to Rules 154.1, 154.2(4), 154.16 (7), 154.22(4), 154.23(1), 154.25(2), and 154.40(7)

Committee members inquired why the department was removing the prohibition on advertising by a health care practitioner. Ms. Reisetter stated that the department added the prohibition in its initial rules, but then the committee delayed those rules in July, based on the manufacturer’s objections. She stated that the department met with the manufacturer in September and agreed to remove that rule and agreed that concerns could be dealt with through complaints to a licensing board rather than through an advertising prohibition.

Committee members inquired whether physicians are currently prohibited from advertising the ability to prescribe traditional pharmaceuticals because committee members did not think that there should be greater rights to advertise cannabidiol than traditional pharmaceuticals. Ms. Reisetter was unsure; she said she would report back.

Committee members inquired about the change in tracking of plants. Ms. Reisetter stated that the intent is to track information once the plant is viable, which is before the plant is harvested. She stated that if that is unclear, she will clarify at adoption, if necessary. Committee members suggested that if the department is only tracking at the point of harvesting, there is the potential that the plants could be siphoned off and misused.

No action taken on ARC 4772C.

## **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT**

Representing the agency: Maison Bleam

ARC 4784C (NOIA), Disease Control—Animals at Exhibitions, Proposed Amendments to Rule 64.34

No discussion on ARC 4784C.

ARC 4788C (AF), Storage of Bulk Dry Animal Nutrients, Amendments to Rules 49.1 and 49.7

No discussion on ARC 4788C.

ARC 4790C (AF), Meat and Poultry Inspection — Cooperative Interstate Shipment (CIS) Program, Amendments to Rules 76.2 and 76.6

No discussion on ARC 4790C.

ARC 4789C (AF), Animal Welfare, Amendments to Chapter 67

Ms. Betsy Fickel, a member of the public who identified herself as a professional retired dog breeder, provided a handout to committee members and discussed her concerns regarding the rulemaking. She raised questions with the definition of rescues, arguing that the department had exceeded its statutory authority. She also raised constitutional concerns with the rulemaking's treatment of the seizure of animals, specifically noting due process concerns and arguing that the rulemaking was inconsistent with Iowa Code chapter 17A. In response to an inquiry from committee members, Mr. Bleam stated that the department's assistant attorney general reviewed the rules and the department tried to balance the property rights of the individual with the health and well-being of the animal. As such, they made an effort to include an expedited hearing in front of the department. Mr. Bleam stated that currently, without the rulemaking, the department has the ability to act to remove an animal in danger, but it is a more restricted ability. Committee members asked Mr. Bleam to work with Ms. Fickel to address the questions she raised in an ongoing effort to improve the animal welfare rules.

Mr. Dane Schumann and Ms. Sandra Suarez stated that they represented the dog daycare owners that were present and were requesting a delay of a portion of the rulemaking because of the following issues with the rulemaking: the 75-square-feet-per-dog requirement and the requirement of posting signage indicating the maximum allowable number of dogs in spaces smaller than 1,125 square feet for a playgroup.

Ms. Corrine Priebe, owner of 4 Paws Unleashed, stated that the rulemaking, specifically the 75-square-foot-per-dog requirement, if enforced, would cause her to lose at least \$300,000 per year, require her to terminate 8 to 10 full-time employees, pay unemployment, and cause her to go out of business in at least one of her two locations within 2 to 5 years. Ms. Priebe provided anecdotes regarding department inspectors instructing her to divide rooms over 1,125 square feet in half several times.

Ms. Karissa Schreurs, owner of Canine Country Club, stated that she had done extensive research and Iowa laws are more restrictive than surrounding states, and as such, she and others would not be expanding in Iowa, but would rather be expanding in nearby states. She objected to the 75-square-foot-per-dog requirement and the signage requirement. She stated that the 75-square-foot-per-dog requirement may be current law, but it is not current practice. Rather, she stated inspectors currently evaluate whether the animals look comfortable and safe and base their inspection on that metric. She stated that some of the owners present at the meeting have spaces smaller than 1,125 square feet and the dogs are content. She stated that these requirements will cause substantial revenue loss, reduce

staff, and increase prices. For example, she said she would have to increase prices from \$22 to \$28 per day to recover the loss of revenue. She stated that the market cannot sustain this increase because she tried to increase prices to \$25 per day previously and saw a great reduction of customers and it took 18 months to recover. She also stated that rooms as large as the rulemaking requires are not safe because dogs would hunt each other, get into altercations with one another, and handlers would not be able to get to the animals in time to intervene. Furthermore, the industry is self-regulating; if animals were getting hurt, customers would not return and would leave poor reviews online, and businesses would close. Ms. Schreurs requested a delay of the rulemaking. In response to an inquiry from committee members, Ms. Schreurs stated that she passed inspection with rooms smaller than 1,125 square feet.

Ms. Sydney Sjaardema, owner of Bark Avenue, stated she was reiterating the comments she presented at a prior committee meeting, stating that she wanted dog daycare representation in the rulemaking process, stating the square footage requirements were unreasonable based on the cost of commercial space, stating that real-world experience does not reflect the needs of dogs. Ms. Sjaardema invited people to visit her \$2.6 million facility that she is in the process of building. She stated that her employees go through a certification process that teaches dog safety. Ms. Sjaardema stated that she and her colleagues donate services to rescues, but with the new spatial requirements she would not be able to donate such services. She also stated that if the rulemaking is allowed to go into effect she not only will not be able to finish building her facility, it will not make sense to be in business at all. She requested a delay and representation in a new rulemaking process. In response to an inquiry from Committee members regarding how small the size of room she would like to put animals in, Ms. Sjaardema said her indoor area for 15 small dogs is 600 square feet and her indoor area for 15 large dogs is 800 square feet, and the spaces outside are bigger.

Ms. Erin Bird, co-owner of the Collar Club, stated that the signage requirement is new and the play area definition is new and unclear.

Mr. Corey Bird, co-owner of the Collar Club, stated that Colorado law allows 60 dogs per playgroup and has no square footage requirements; as such it should not be an example for this rulemaking. Mr. Bleam stated that the department adopted the 1-to-15 staff ratio from Colorado, not the standards mentioned by Mr. Bird. Mr. Bird stated that his business has a waitlist of 99 people. If this rulemaking is in effect, people will not have a place to take their dogs. He stated that the owners of dog daycares care about dogs. He further stated that square footage requirements do not ensure safety because large spaces lead to dogs running and that is unsafe.

Committee members asked Mr. Bleam to respond to the assertion that the inspectors were not enforcing the requirements. He read an inspection report which found a violation for Canine Country Club, where the inspector did not cite the dog daycare for a violation and Mr. Bleam called it a “teachable moment.” Committee members expressed frustration, stating the 75-square-foot requirement may have been current law, but it was not current practice.

Committee members asked for the factual record on the harm to animals related to this rulemaking. Mr. Bleam cited scholarly research and best practices proposed by animal behaviorist Ms. Victoria Stilwell, animal behaviorists Dog Gurus, and policies from North Carolina and Colorado. Mr. Bleam did not have data from Iowa dog daycares. Committee members questioned the urgency of the rulemaking due to the lack of data on injuries from Iowa dog daycares. Ms. Schreurs stated that the businesses present at the meeting had an injury rate between .02 percent and .04 percent.

Committee members inquired if a dog daycare had been closed down due to a violation of the 75-square-foot requirement. Mr. Bleam was unsure. In response to an inquiry from committee members, Mr. Bleam stated that between 2 and 4 percent of licensees were noncompliant.

Committee members stated that regardless of whether a rule is currently enforced, it is not a good idea to conduct business as though it will not be enforced in the future — for example, building a multimillion dollar facility that does not comply with a current administrative rule, which one dog daycare owner is in the process of doing. Committee members stressed that they see both sides of this issue, ranging from animal welfare, the financial impact of the rulemaking, and that a rule on the books should not be taken for granted.

Committee members urged a review of the statute underlying the rulemaking, stating that the 75-square-foot rule, which is in current rules, was arbitrary and unnecessary. Committee members read an excerpt from the statute and noted that it did not have a square footage requirement. Committee

members suggested that dog daycare owners submit a petition for rulemaking with the standard that they think is appropriate.

Upon inquiry from committee members, Mr. Ewing opined that by putting a session delay on the requested portion, there would be no standard governing this topic because the former chapter is rescinded.

Committee members discussed the possibility of a session delay and considered authorizing emergency rulemaking in the future. Mr. Bleam reiterated the stance of the department in moving forward with the adopted rulemaking, relying on scholarly research including certification offered by the dog daycares endorsing standards consistent with the rulemaking, and utilizing the department's grant of rulemaking authority. Committee members told Mr. Bleam that the department needed to change course because it was overreaching its authority. Committee members requested statistics from the department on injuries to animals at dog daycares. Mr. Bleam said he would conduct that research.

Ms. Emily Piper, who represented the Humane Society Legislative Fund of Iowa, urged the adoption of the rulemaking as drafted without a session delay to ensure the greatest protection of animals without exception.

**Session Delay**

A motion for a session delay of a portion of new rule 21 IAC 67.8, subrule 4, paragraph "b," as adopted in ARC 4789C, carried on a 7-3 record roll call vote.